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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LINDA DRAVES, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B203699 (Los Angeles County Super. Ct. No. PS009865)

APPEAL from an order of the Superior Court of Los Angeles County. Melvin D. Sandvig, Judge. Affirmed.

Law Offices of John W. Noland for Plaintiff and Appellant.

Raymond G. Fortner, Jr., County Counsel, Ralph L. Rosato, Assistant County Counsel, and Jerry M. Custis, Principal Deputy County Counsel, for Defendant and Respondent.

SUMMARY

In this appeal, Linda Draves argues the trial court abused its discretion in denying her petition for relief from the requirement of filing a timely claim as required under the Tort Claims Act. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

On October 10, 2006, Linda Draves appeared at the sheriff station near the intersection of Magic Mountain Parkway and Valencia Boulevard and requested documentation of her fall outside in the Civic Center parking lot the week before (on October 2). According to the "County of Los Angeles Sheriff's Department Incident Report" prepared at that time, she was injured while walking through the library parking lot on her way into the station.[1]

On January 7, 2007, Draves retained an attorney (Law Offices of John W. Noland) with an office "just down the street" on Valencia Boulevard to represent her in connection with this incident. Attorney Andrew Zeytuntsyan prepared a claim for damages against the City of Los Angeles using a City of Los Angeles Claim Form along with a cover letter addressed to the City of Los Angeles. In the body of the letter dated February 20, Zeytuntsyan stated that the Law Offices of John W. Noland had been retained to represent Draves in connection with a claim against the County of Los Angeles.

In a letter dated April 23, the City of Los Angeles denied Draves's claim, noting: "The County of Los Angeles is a separate public entity and not part of the City of Los Angeles. (See enclosure for address.)"

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[1] According to Draves's opening brief, the "entire area consists of Los Angeles County buildings, which includes the Sheriff's station, library and the local court."

Zeytuntsyan then prepared a new claim for damages—this one on a County of Los Angeles claim form—along with a cover letter to the County of Los Angeles dated April 24. Zeytunsyan also forwarded pictures of the location, including buildings in the background. On May 4, the County denied Draves's claim, indicating that Draves failed to meet the requirements for approval of an application to present a late claim.

On May 16, Draves filed a petition for an order relieving her from her failure to file a timely claim against the County of Los Angeles because of "mistake, inadvertence, surprise or excusable neglect." According to the supporting declaration of John W. Noland, Draves filed her claim with the City of Los Angeles because she "believed Los Angeles City was the responsible entity for maintaining the said parking lot." Then, "[u]pon learning of the facts that Los Angeles County is the responsible entity, on or about April 24, 2007," she filed her application for leave to present a late claim. The documents submitted to and received from the County of Los Angeles (but not the original City of Los Angeles claim form and cover letter or City rejection letter) were attached as exhibits.

In its opposition to the petition, the County argued there was no evidence to establish that it was reasonable for Draves's claim to have been filed with the City and not the County of Los Angeles when her alleged fall occurred so far away from the City of Los Angeles and "just down the street" from her attorney's office in Valencia. Along with his declaration, County counsel submitted maps depicting the location identified in Draves's claim, the location of her attorney's office and the cities in the surrounding area.

In reply, Draves argued: "While the letter was intended for the 'County of Los Angeles,' the Claim Form, filled out by the office staff, was that of the City of Los Angeles, which was mistakenly printed out and addressed to the City, and therefore, it was presented to the City of Los Angeles instead of the County of Los Angeles." (No declarations accompanied the reply brief.) Draves further asserted that the County was not prejudiced, indicating she had provided photographs of the scene on May 3 and that the County had notice since Draves made an incident report with the Los Angeles County Sheriff's Department after her fall.

On July 20, the County filed a supplemental brief, noting the contradictory positions taken in Draves's petition and reply and submitted photographs of the location identified in Draves's claim—the parking lot "adjacent to a County library building and an exterior mall of County offices" all bearing "very prominent 'County' designation[s (and no City of Los Angeles designations)]."[2]

On August 8, Zeytuntsyan and Noland filed declarations. Noland stated as follows: He hired Zeytuntsyan in October 2006, and Zeytuntsyan became a member of the bar two months later. He "assigned [Draves's] case to . . . Zeytuntsyan and asked him to prepare a governmental claim against Los Angeles County." The week preceding February 20, 2007, he was out of the office in depositions and mediation and "never saw the Claim Form or accompanying letter which was inadvertently sent to the City of Los Angeles."

In his declaration, Zeytuntsyan stated that, after moving to America at the age of 11, he lived in the San Fernando Valley; he first visited the Santa Clarita Valley in connection with his employment with Noland. "After an initial investigation," he prepared a claim for damages against the City of Los Angeles using a Los Angeles City Claim Form and also prepared a letter to accompany the claim form addressed to the City of Los Angeles." "At some point, prior to February 20, 2007, I discussed this case with John Noland who informed me that the accident occurred in the County of Los Angeles." In the body of the February 20 letter, he said, he directed the claim to the County of Los Angeles, but "mistakenly failed to change the address" from the City's to the County's, failed to use a County claim form and instead forwarded the City of Los Angeles Claim Form. On May 3, he said, he forwarded photographs of the scene to the County.

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[2] The signage depicted includes the following: "City of Santa Clarita Valencia Regional Library Los Angeles County Library System," "Los Angeles County Public Library North County Region Administrative Offices," "County Probation," "County Health" and "County of Los Angeles Department of Public Works Building and Safety Division."

At the hearing on August 30, the trial court summarized Draves's petition and supporting documents, noting contradictory and sometimes unsubstantiated positions she had taken. "It wasn't clear at first . . . what the real mistake or excusable neglect was in this case which resulted in the late claim." Later, the court denied the petition: "[T]he declarations submitted by the attorneys still failed to show reasonable diligence [as] required to establish the excusable neglect for the later claim. And the declarations don't rebut the prior showing that the structures nearest to the claimed fall were labeled County of Los Angeles. And the City of Los Angeles is nowhere near the incident site. And [Draves's] counsels' offices are located near the location . . . . And so there's no reason to blame . . . it on . . . somehow somebody thought it was the City of Los Angeles.

"[E]xcusable neglect is the act or omission that might be expected from a prudent person under similar circumstances. [T]he act of sending the claim to the City of Los Angeles after being told the incident occurred within the County doesn't show reasonable prudence."

Draves appeals.

DISCUSSION

Draves contends the trial court abused its discretion when it denied her petition. We disagree.

Under California's Tort Claims Act, a personal injury claimant must file a governmental claim with the responsible governmental agency, before the claimant may sue that governmental agency. (Gov. Code § 945.4 [all further undesignated statutory references are to the Government Code].) To be timely, the filing must not be later than six months after the accrual of the cause of action. (§ 911.2, subd. (a).) However, if the filing is not timely, the claimant may apply to the responsible agency, requesting leave to present a late claim. (§ 911.4, subd. (a).) If the agency denies the claimant's application, the claimant may petition the trial court for relief from the requirement of filing a governmental claim altogether. (§ 946.6, subd. (a).)

After filing the petition, the court must make an independent determination on the petition, considering all the relevant evidence. (§ 946.6, subd. (e).) The court must grant the petition if (1) that the application to the public entity for leave to file a late claim was made in a reasonable time, and (2) at least one of the four grounds that are listed in section 946.6, subdivision (c)(1) through (4), have been met. (§ 946.6, subd. (c).)

We review the trial court's denial of such a petition for abuse of discretion. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275 (*Bettencourt*).) The trial court's discretion to grant relief is not unfettered. (*Ibid.*) The trial court must exercise its discretion "'in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.'" (*Ibid.*, citation omitted.) Section 946.6 is a remedial statute. (*Ibid.*) The Legislature intended that it would "'provide relief from technical rules that otherwise provide a trap for the unwary claimant.'" (*Ibid.*, citation omitted.) Its primary policy is to favor a trial on the merits. (*Id.* at p. 276) In order to implement this policy, a trial court should construe section 946.6 in favor of relief whenever possible. (*Ibid.*) "[W]here uncontradicted evidence or affidavits of the petitioner establish adequate cause for relief, denial of relief constitutes an abuse of discretion." (*Ibid.*, citation omitted.)

However, the claim presentation requirement serves other purposes as well: "(1) it gives the public entity prompt notice of a claim so that it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so that it can better prepare for the upcoming fiscal year." (*Bettencourt, supra*, 42 Cal.3d at p. 279.) When the claim is presented to the wrong entity, the claim does not give notice to the right public entity of its potential liability so that it could investigate the claim and possibly settle it.

Draves relies on subdivision (c)(1) of section 946.6. This provision requires that the petitioner prove, by a preponderance of the evidence, that "[t]he failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect . . . ." (§ 946.6,

subd. (c)(1).) However, upon such a showing, the court may deny the petitioner relief, where "the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4." (§ 946.6, subd. (c)(1).) Accordingly, the initial burden is on Draves to prove that the mistake or neglect was excusable. (*Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 65 [Except in expressly defined circumstances not presented here, "Code of Civil Procedure section 473 still requires that an attorney's [error] be excusable before relief can be granted under that provision. That standard is expressly retained in Government Code section 946.6."]; and see *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258 ["'A party who seeks relief under [Code of Civil Procedure] section 473 on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable . . . .'"].)[3] Only if Draves meets this burden does the burden shift to the County of Los Angeles to prove prejudice. (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1297 ["The public entity has no burden of establishing prejudice arising from the failure to file a timely claim until after the party seeking relief has made a prima facie showing of entitlement to relief"].)

Draves contends that Attorney Zeytuntsyan's failure to file a timely claim with the County of Los Angeles, and instead filing with the City of Los Angeles, constituted excusable neglect or mistake. "In deciding whether counsel's error is excusable, this court looks to: (1) the nature of the mistake or neglect; and (2) whether counsel was otherwise diligent in investigating and pursuing the claim." (*Bettencourt, supra,* 42

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[3] In *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 62, the court considered whether "amendments to Code of Civil Procedure section 473, requiring a trial court to vacate a default, default judgment, or dismissal if the aggrieved party's attorney submits a timely application for relief 'in proper form, . . . accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect,' apply to a motion under Government Code section 946.6 for relief from the claim-filing requirement under the Government Tort Claims Act," and explained why they do not. (*Id.* at pp. 64-65.)

Cal.3d at p. 276.) Concerning the first aspect, "examining the mistake or neglect, the court [must] inquire[] whether 'a reasonably prudent person under the same or similar circumstances' might have made the same error." (*Ibid*., citation omitted.) "A person seeking relief must show more than just failure to discover a fact until too late; or a simple failure to act. He must show by a preponderance of the evidence that in the use of reasonable diligence, he could not discover the fact or could not act upon it." (*Department of Water & Power v. Superior Court, supra,* 82 Cal.App.4th at p. 1296.)

This case is analogous to *Spencer v. Merced County Office of Education* (1997) 59 Cal.App.4th 1429 (*Spencer*) in which the appellate court affirmed the trial court's finding that the petitioner serving the County of Merced, instead of the County of Merced Office of Education, was not an excusable mistake. In *Spencer*, a driver, while driving within the course and scope of his employment for the County of Merced Office of Education, hit the petitioner, as she was crossing the street. (*Id.* at p. 1432.) A police report stated that the County of Merced Office of Education was the driver's employer. (*Ibid.*) Also, the petitioner's initial attorney received a letter that specifically stated that the County of Merced Office of Education was the driver's employer. (*Ibid.*) Subsequently, petitioner retained the assistance of another attorney. (*Id.* at p. 1433.) The second attorney received a file with the police report, the letter, and a claim, which the prior attorney had completed but not filed. (*Ibid.*) The claim specified the wrong public entity, the County of Merced. (*Ibid.*) The second attorney filed the claim as addressed. (*Ibid.*) After the County of Merced rejected the claim, the statutory time period had expired and the second attorney filed a petition seeking relief from the failure to file a claim within the statutory period. (*Ibid.*) However, the trial court denied the petition.

The appellate court affirmed the trial court's denial. In doing so, the appellate court analyzed petitioner's claim under the two aspects that the *Bettencourt* court had enunciated: the nature of the mistake and overall diligence of the attorney. (*Spencer, supra,* 59 Cal.App.4th at p. 1437.) Concerning the first aspect, the court concluded that the nature of the mistake was not one which a reasonably prudent person under the same or similar circumstances might have made. (*Id.* at p. 1438.) As its basis for that

conclusion, the court found that the name of the public entity, which employed the driver was specifically set forth in the body of the letter, which was addressed to the first attorney and that "[r]easonably astute persons reading the letter would [have] focus[ed] their attention on the named public agency." (*Ibid.*) Moreover, the court noted that, although the letter was not addressed specifically to the second attorney, "it was in the file he received and reviewed" and, as such, "[i]t raised a clear flag." (*Ibid.*) The court mentioned that "the police report specifically listed the Merced County Office of Education as the employer of [the driver]," which should have raised a clear flag, as well. (*Id.* at pp. 1438-1439.)

Similarly, in this case, the trial court did not abuse its discretion in concluding that the nature of Attorney Zeytuntsyan's mistake was not reasonable. Zeytuntsyan's mistake, like the mistake of the attorney in *Spencer*, was that he filed the claim with the wrong public entity. Here, as in *Spencer*, Zeytuntsyan was in possession of information establishing the public entity responsible (in this case, for the location where Draves was allegedly injured). According to Draves's own evidence, Attorney Noland specifically informed Attorney Zeytuntsyan that the proper responsible entity was the County of Los Angeles. Attorney Zeytuntsyan filed the claim against the wrong entity despite knowledge of the proper public entity. "When there is a readily available source of information from which the potential liability of a government entity may be discovered, a failure to use that source is deemed inexcusable." (*Department of Water & Power v. Superior Court*, *supra*, 82 Cal.App.4th at p. 1294, citation omitted.)

Additionally, the *Spencer* court concluded that the second aspect of the *Bettencourt* test was not met. Specifically, the court concluded that the attorneys were not otherwise diligent in investigating and pursuing the claim. (*Spencer*, *supra*, 59 Cal.App.4th at p. 1439.) To support that conclusion, the court commented that "[w]hile [the attorney] was diligent in filing the complaint (albeit against the wrong public agency) and seeking to file a late claim, he presented absolutely no evidence that he had investigated the case, hired an investigator, or requested any information about the accident." (*Ibid.*)

In his declaration, Zeytuntsyan asserts that he conducted an "initial investigation" but does not specify what steps he took to substantiate this assertion. Draves identified the location and initiated the preparation of a Los Angeles County Sheriff's Department Incident Report in this regard. Noland's offices were located "just down the street" from this location. Photographs of the location establish that the surrounding buildings prominently identify each building as a County office. Moreover, Noland specifically told Zeytuntsyan the County was the entity involved. (Cf. *Department of Water & Power v. Superior Court* , *supra*, 82 Cal.App.4th at p. 1296, citations and internal quotations omitted ["Where the lateness of the claim is attributable to the failure of the claimant or his counsel to conduct a reasonably prudent investigation of the circumstances of the accident, relief from the claims filing statute is not available. It is not the purpose of remedial statutes to grant relief from defaults which are the result of inexcusable neglect of parties or their attorneys in the performance of the latter's obligation to their clients."].)

In addition to these facts, the trial court noted the contradictory positions Draves (through her counsel) took throughout the course of these proceedings. First, she claimed the reason for the mistake was that she reasonably believed that the proper responsible entity was the City of Los Angeles. Then, she asserted that the reason for the mistake was that a clerical error caused the letter to be sent to the City of Los Angeles. Here, the record did not contain uncontradicted evidence to establish adequate cause for relief; to the contrary, Draves's own evidence undermined her own position. (See *Bettencourt, supra,* 42 Cal.3d at p. 275.) Accordingly, she has failed to demonstrate the trial court's denial of relief was an abuse of discretion. (See *ibid.*)

Relying on *Bettencourt, supra,* 42 Cal.3d at pages 279 to 280, Draves argues that the trial court abused its discretion when it denied her petition for relief, for the reason that "the trial court appeared confused and 'wasn't clear . . . what the mistake or excusable neglect was . . .'." Having reviewed the record in its entirety, it is clear the trial court was neither confused nor unaware of the nature of the mistake. Rather, the record establishes the court was pointing out the contradictory statements that Draves's

attorneys had made on her behalf. First, the argument was that Draves thought the City was the proper public entity. Then, the position was that the County was always the intended recipient but "office staff" completed a City of Los Angeles form and addressed the cover letter to the City of Los Angeles. Thereafter, the argument was that Noland told Zeytuntsyan the County was the proper entity but Zeytuntsyan failed to understand the difference between the City and County (and Zeytuntsyan mentioned the County in the body of the cover letter but failed to complete a new claim form and failed to properly address the cover letter). On this record, Draves has failed to demonstrate an abuse of discretion in the trial court's denial of her petition for relief from the claim filing requirement.

DISPOSITION

The order is affirmed. The County is entitled to its costs of appeal.

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WOODS, J.

We concur:

PERLUSS, P. J. **JACKSON, J.**